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No. 75-1235

In the Supreme Court of the United States

OCTOBER TERM, 1975

ROBERT MCKINLEY HOUSTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that probable cause for his arrest and the subsequent search of his briefcase was not sufficiently established.

After a jury-waived trial in the United States District Court for the Southern District of Ohio, petitioner was convicted on two counts of possessing controlled substances (heroin and cocaine) with intent to distribute, in violation of 21 U.S.C. 841(a)(1). He was sentenced to consecutive nine-year prison terms. The court of appeals affirmed (Pet. App. F 11a-13a).

The evidence showed that on the evening of February 18, 1974, Drug Enforcement Administration (D.E.A.) agent John Coonce, stationed in New York, received detailed information concerning a drug transaction from an informant who had previously provided reliable information to the authorities (Tr. 19).[1] The informant

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[1] "Tr." refers to the transcript of the suppression hearing held on September 17, 1974.

indicated that an individual from the Dayton, Ohio, area had purchased a quantity of drugs from a known person at the Paradise Bar in New York. The purchaser was described as a thirty-year-old black male, about six feet two inches in height, who was wearing a black and white checked suit, a black turtle neck sweater, and a three-quarter length black fur coat. The informant further indicated that the purchaser would be boarding a plane early that morning to return to Ohio (Tr. 10, 20).

Accordingly, Coonce went to the airport and observed a person meeting the above description board TWA flight 129 to Dayton. Coonce relayed this information to D.E.A. agent Lough, also in New York, and Lough hurriedly called D.E.A. agent Augustine Ginetz, who was stationed in Cincinnati (Tr. 16, 8-9). Ginetz and two other agents then went to the Dayton airport and, after flight 129 had landed, observed petitioner, matching the description given to Coonce, alight from the plane carrying an attache case (Tr. 9, 10). Petitioner met another person and as the two left the airport, the agents arrested them and discovered quantities of heroin and cocaine in petitioner's briefcase.

Petitioner first argues (Pet. 7-12) that the facts do not establish that the informant possessed direct knowledge of the events that he described to Coonce. While there was no indication as to how the informant learned of petitioner's activities, the detailed description of petitioner and his movements—corroborated by Coonce and the arresting agents—fully established the reliability of his information. Such particularized detail constitutes an alternative to the general requirement that the specific source of an informant's knowledge be proven. See *Spinelli* v. *United States*, 393 U.S. 410, 416.

Since Coonce's information and subsequent observation at the airport constituted probable cause for petitioner's arrest, no impropriety attached to the fact that Ginetz, rather than Coonce, actually made the arrest, based upon the information relayed to him.[2] Contrary to petitioner's view of *Whiteley* v. *Warden*, 401 U.S. 560, that case affirms that once probable cause is established, the subsequent arrest may be effectuated by others, in reliance upon the initial investigators' findings. *Id.* at 568.

Petitioner further contends (Pet. 12-14) that because agent Coonce was not called at the suppression hearing to substantiate Ginetz's testimony detailing what he had learned from the New York agent, the proof of probable cause was insufficient. This contention is incorrect. Probable cause may be established by hearsay. *United States* v. *Harris*, 403 U.S. 573, 580; *United States* v. *Matlock*, 415 U.S. 164, 172-177. In any event, petitioner could have subpoenaed Coonce if he had wished to dispute the accuracy of Ginetz's testimony.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MAY 1976.

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[2]That an arrest warrant was not obtained for petitioner's arrest does not nullify the propriety of the arrest. *United States* v. *Watson*, No. 74-538, decided January 26, 1976.